

## **The Rights of Children and Young People in State Care**

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This paper highlights New Zealand's failure to protect, promote and implement children's human rights by recognising those rights in legislation and policy. It specifically focuses on the lack of human rights recognition for arguably one of the most vulnerable groups in our society, children and young people in the care of the state.

There were 3,836 children and young people in out-of-home care placements as at 31 March 2013. This can be placement with wider family/whānau, a Child Youth and Family(CYF) caregiver, in a CYF Family Home, an NGO Child and Family Support Service, or Residence (Child Youth and Family, 2013). The majority of children come into care due to issues of abuse and neglect with their birth families.

Currently under New Zealand legislation and policy frameworks these children do not have their rights upheld, as per New Zealand's obligations under the United Nations Convention on the Rights of the Child (UNCRC) which New Zealand ratified in 1993.

It is particularly important for the care and protection of children needing state care as the government has the responsibility as a state body to ensure their rights are upheld, alongside their direct responsibilities as "corporate parent". It is these vulnerable children, for whom the Government is the parent, that are being forced out into the adult world when they turn 17 years of age, often with little to no support.

UNCRC Article 1 defines anyone below the age of 18 years as a child. Under New Zealand legislation the 17<sup>th</sup> birthday of a young person is when they are regarded as no longer being a child and no longer in need of care and protection. As Boshier and Wademan identify they are "deemed too old to fall under the protective arm of our youth legislation, but too young to be appropriately assisted via adult legislation" (2010, 294).

Guardianship orders can continue until a young person turns 20 however as Judge Peter Boshier, former Principal Family Court Judge identifies "the reach of the Act has been

interpreted to exclude care arrangements from being made for people who have celebrated their seventeenth birthday” (Boshier and Wademan 2010, 299).

Guardianship orders are rarely used to support children past the age of 17 and this is evidenced by the number of children still in care over the age of 17. At 30 June 2012, there were only 24 young people aged 17 and over in the care of Child Youth and Family, compared to 834 14-16 years olds. That is only 24 young people across the whole country being supported by Guardianship orders past their 17<sup>th</sup> birthday (Child Youth and Family, 2013).

Seventeen is the youngest age of discharge from the statutory care system in the western world. Children in New Zealand are not even old enough to have completed their secondary education before being discharged to care for themselves.

Young people in the general population are staying for longer periods of time within family environments, while vulnerable young people leaving care are expected to live independently and become fully functioning members of society at 17 years of age. Comparative to the general population, young people in the care system have experienced significant trauma, grief or loss in their lives; have had less success within the education system; have inadequate family/whanau networks or support; have greater mental health problems; less resilience to risk; are less confident and significantly lacking in the skills required to live independently (Cashmore and Paxton 1996; Stein 2005).

*“The average age of leaving parental care in New Zealand is 23, so why does the care system relinquish all responsibility for us when legally we are not deemed adults? Why are we taken out of care when we cannot legally sign for papers such as tenancy, housing, bill payments, let alone vote? We don’t need the added stress. Picture your average teenager dealing with emotional, hormonal or physical changes to the body; with the added strain from school, exams, peer pressure all while trying to fit in and develop their own identities. The difference between this teenager and a teen in care, is that at age 17 your average teen is not expected to do this on their own. At 17 your average teen has emotional support from family. We do not.*

*Financial support from family. We do not. Has a place to fall back on. We do not. We are alone. We're alone."*

Robin, 20 years  
Youth Hui speech, Auckland, July 2013

Article 3.2 and Article 6 of UNCRC outlines states responsibilities to ensure the child such care and protection as is necessary for his or her wellbeing and that a child who cannot remain with their family shall be entitled to special protection and assistance. Despite this we continue to deprive children of care and protection once they reach their 17<sup>th</sup> birthday. These are arguably some of the most vulnerable children in our society and yet they are forced out into the adult world before they are officially an adult themselves and much earlier than their peers.

An argument made for discharging at 17 is that young people want to leave care at this age and do not want to continue in care placements. UNCRC clearly identifies that states need to ensure the care and protection necessary for the wellbeing of the child. It must be remembered that UNCRC still identifies 17 year olds as children and that we all know that a 17 year olds desires are not always the best for their wellbeing.

*"What many young people leaving care don't realise is that once your discharged you can't go back. Most 17 years olds think of the freedom and liberties that come with being independent but fail to recognise the responsibilities and financial pressure of living independently. It escapes us whether we can feed ourselves, how we will make rent the next week, how we will afford to go the doctors and just how alone we can end up being."*

Kellie, 20 years  
Youth Hui speech, Auckland, July 2013

By not providing care to children once they turn 17 years of age and not adequately supporting them as they transition from care, New Zealand contravenes a number of other articles from the Convention, besides those mentioned above. The impact of our legislation has a flow on effect to other areas of the young person's life. Children in New Zealand are not even old enough to have completed secondary school before being discharged to care

for themselves. Being discharged at 17 years and suddenly having to become responsible for all their own needs and living costs whilst still at secondary school is a barrier to them recognising their right to education (Article 28), which in turn affects their chances at better quality or meaningful employment.

Young people leaving care are often pushed into poverty, barely surviving if they wish to study and with high accommodation costs. The Youth Payment<sup>1</sup> along with an accommodation supplement often barely covers the cost of basic living, leaving no money for health needs, clothing or saving. The lack of money and capacity to provide the basics for themselves is a shock to a 17 year old leaving care that has had everything supplied for them in the past.

The lack of income along with difficulty in finding accommodation is a barrier to children leaving state care realising the right to an adequate standard of living (UNCRC Article 27). Children leaving care do not have a rental history and are often not seen as desirable tenants in a rental market that is demand driven, allowing landlords to be selective with the tenants they rent to. At 17 years of age children leaving care are not eligible for Housing New Zealand homes. Once they do turn 18, they are caught in the waiting lists and are not seen as a priority group.

For many leaving care, the costs of bond and rent in advance are outside what they can afford, further limiting their options. The \$800 available from Work and Income often does not cover the full cost of this, and as it is recoverable, pushes children into debt just to get into secure accommodation. Where their income does not adequately cover basic living expenses the debt mounts and the cycle of poverty and transience (often motivated by a bid to escape debt) is established.

Children are frequently forced to live in undesirable circumstances due to their lack of options. These include unsuitable domestic relationships maintained in order to gain shelter; hostels or boarding houses alongside older homeless people with their own issues;

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<sup>1</sup> The Youth Payment is a financial support benefit available to 17 years olds through Ministry of Social Development, [www.workandincome.govt.nz](http://www.workandincome.govt.nz)

living on and working the streets to survive day to day and returning to abusive or unhealthy family situations. Children who were more often than not uplifted due to being victims of abuse are pushed back into abusive situations just to have a roof over their heads, which is a violation of their right to freedom from all forms of violence (UNCRC Article 19).

Article 39 of UNCRC outlines that states should take appropriate measures to promote physical and psychological recovery and social reintegration to victims of abuse and neglect. Our care system is not providing this to children who have been removed from their families for the very reasons of abuse and neglect. By discharging suddenly without support whilst still a vulnerable child and not providing adequate preparation for their transition from care the state is not providing adequate measures for social reintegration. There are numerous overseas studies that identify the poor outcomes suffered by young people that have experienced the care system (Broad 2005; Cashmore and Paxton 1996 and 2006; Collins 2001; Stein 2005). In New Zealand although more limited the research also points to poor outcomes and difficult transitions (Coote 2007; Leoni 2007; Ward 2000; Yates 2000).

This highlights the numerous human right violations of our current legislative approach of discharging from care at 17 years old. But what of the actual care experience?

A study by the Office of the Children's Commissioner in 2010 into the quality of care services highlighted that 25.5% of the children interviewed had experienced between four and six placements and 22.2% had more than six placements (Atwool, 2010). That's more than six different homes, different sets of caregivers and house rules to adjust to. Being in care can be an incredibly isolating experience for children, especially when coming into care or moving placements means moving schools and communities as can often be the case. This dislocation from family, community and sometimes culture deepens the vulnerability of this often forgotten group.

*“Shifting placements and locations on a regular basis strips us of the opportunity to make connections with friends and family, get involved in hobbies, to have consistent education and to develop a sense of belonging. It is so hard to develop social skills and to get to know someone well enough to trust them when we are moved often.*

*We struggle to understand friendships and how they work. How do we learn to sustain relationships when the people around us always change?"*

Tupua, 17 years  
Youth Hui speech, Auckland, July 2013

As with other care and protection systems around the world our care system is weighed down by bureaucratic procedures and requirements, piled on top of scarce resources to support children in care (Bessell and Gal, 2010). Over the last 5 years, notifications have risen from 89,461 per year in 2008 to 152,800 notifications in 2012 (Child Youth and Family, 2013). Our care and protection system does not have the resources to investigate this level of notifications as well as provide quality care to children, thus the protection end of the work overwhelms the care side.

Child Youth and Family have embraced the rhetoric of human rights by developing the Charter for Children and Young People in Care that outlines the rights of those in state care. This is a great start for letting children know what their rights are whilst in the foster care system. However the importance is the realisation of those rights, the practice to ensure that rights move from rhetoric to reality. The question is who monitors that these rights are upheld? What relationships exist for young people to tell someone if those rights aren't being met?

*"I saw my social worker once every three months, and this was because she had a court report due. During my three years in care, I had three different social workers of which only one I met face to face. The rest occurred in telephone conversations. There were also times where I did not have a social worker allocated to me, often for several consecutive months. No one knew me or my circumstances in the system, and thus they would not assist me in any way even though it was their job."*

Kellie, 20 years  
Youth Hui speech, Auckland, July 2013

The risk of the lack of stable relationships for children in care is that there is no trusted person to talk to when rights are not being upheld. With the lack of time and resources in the care system, social workers visits are often limited to quick discussions to complete

court reports. Coupled with a high turnover of staff, relationships do not often exist that engender a sense of trust to share difficulties, let alone the face to face time to discuss them.

Howard Broad's review of the Child Youth and Family Complaints system in June 2013 identified the absence of the voice of the child in the complaints system, highlighting that only two complaints (outside of the Residence Grievance Procedure) have been received by children and young people since the complaint system was changed in 2008. He identified some of the impediments to children and young people complaining including the natural power imbalance and young people assuming there is no place for complaints against people who have so much power over their lives; that children and young people fear the consequences of making a complaint; and the fear that information can be "stored up" and used against them later (2013, 69). All of these reasons highlight the lack of relationships and trust of children and young people in the care system.

So the question then is what auditing is there to ensure that these rights are being upheld?

*"When I was taken away from my loved ones I was never made aware of my rights. My right to privacy, my right to complain, my right to a voice, this made me feel powerless. When I was placed with my first caregivers with a plastic bag of my belongings I was told I was staying in a single bedroom with two other young people for two months. I did not know the caregivers, nor did I know who I would be sharing my space with. This made me feel disposable. No one asked me how I was feeling or what I thought about the situation. My right to an explanation was not upheld."*

Samantha, 16 years

Youth Hui speech, Auckland, July 2013

In New Zealand we do have some fragmented external oversight of the care and protection system through the Children's Commissioner, Ombudsman, Privacy Commissioner, Coroner, the Courts, Child Mortality Review and the Police, however none of these function effectively as a regulator of the full child protection system. Although the Office of the Children's Commissioner has an important role in overseeing Child Youth and Family

policies, practices and procedures it is not resourced or fully enabled to carry out the role of regulator to the full child protection system. One of the recommendations to remedy the lack of regulation is the strengthening of the role and resourcing of the Office of the Children's Commissioner to provide complaints advocacy, practice review, complaints review and children in care monitoring. (Broad 2013, 6-7).

If we are to improve the realisation of human rights for children and young people in the care of the state, it is vital that there is an independent system for monitoring that those rights are being upheld.

When developing future legislation and policy, taking a human rights perspective is important to ensure that children's interests are a key concern. Child Impact Assessments provide a framework for investigating how suggested policies and legislation will impact on children's rights and are used frequently in Belgium, Sweden, Finland, Scotland and Ireland (Hanna and Mason, 2010).

Amnesty International as part of their campaign to make human rights real suggests that a human rights committee be established to identify and resolve inconsistencies between bills and New Zealand's human rights obligations (2013). This could provide another avenue for ensuring new legislation meets New Zealand's obligations under UNCRC.

One of the General Principles for implementing children's rights is the principle of non-discrimination. It would seem that currently in New Zealand a child who has been removed from their family by state intervention is being discriminated against as they do not get the same care and support as would be expected from a reasonable parent, and their rights under UNCRC are not upheld.



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